

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

2005 06 23 AM 9:19
CLERK
SO...

SW

JAMES SCOTT MURPHY,

Plaintiff,

vs.

CIVIL ACTION NO.: CV604-050

JIMMY H. KENNEDY, Librarian,
Georgia State Prison,

Defendant.

ORDER


After an independent review of the record, the Court concurs with the Magistrate Judge's Supplemental Report and Recommendation, to which Objections have been filed. In his Objections, Plaintiff alleges that the Magistrate Judge ignored the undersigned's Order dated May 16, 2005, and recommended that Defendant's Motion to Dismiss be granted due to Plaintiff's misrepresentations of the number of lawsuits he has filed on previous occasions. Plaintiff also alleges that the Magistrate Judge's reliance on the fact that he was advised of the consequences of pursuing his claims in this case does not present evidence that he was aware that he filed three or more civil actions which were dismissed as being frivolous, malicious, or failing to state a claim. Finally, Plaintiff asserts that the Magistrate Judge overlooked his Response to Defendant's Supplement to his Motion to Dismiss.

The evidence before this Court reveals that, between 1990 and 1994, no less than six (6) of Plaintiff's complaints were dismissed for reasons that count as strikes pursuant

to 28 U.S.C.A. § 1915(g). (Doc. No. 37, Exs. 1-8.) In addition, other evidence of records indicates that Plaintiff may have filed several causes of action in addition to these six "strikes". (See Doc. No. 37, Ex. 9.) Further, the Court notes that, in his Complaint in the case *sub judice*, Plaintiff asserts that, while he has filed an action or appeal while he was incarcerated, it was only "two or three" times "around 1987", and that he could not remember whether any of these causes of action had been dismissed for "strike" reasons pursuant to § 1915(g). (Doc. No. 1, p. 1.) While the Court does not doubt Plaintiff's memory as to the reasons for which his causes of action were dismissed, the Court doubts, in light of the number of cases that Plaintiff has filed that count as strikes alone, that Plaintiff was genuine in his claim that he only has filed "two or three" causes of action on previous occasions. Finally, the Court notes Plaintiff's Response to Defendant's Supplement to his Motion to Dismiss. Nothing in this document impacts the Magistrate Judge's findings of fact and conclusions of law.

The Supplemental Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. Defendant's Motion to Dismiss (Doc. No. 13) is **GRANTED**, and the Court shall retain the \$150.00 filing fee Plaintiff paid after the complaint was filed.

SO ORDERED, this 29 day of August, 2005.


B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

United States District Court
Southern District of Georgia

James Scott Murphy
_____)

vs)

CASE NUMBER CV604-50

Jimmy H. Kenney
_____)

DIVISION

STATESBORO

The undersigned, a regularly appointed and qualified deputy in the office of the Clerk of this district, while conducting the business of the Court for said division, does hereby certify the following:

1. Pursuant to the instructions from the Court and in the performance of my official duties, I personally placed in the United States Mail a sealed envelope, and properly addressed to each of the persons, parties or attorneys named below; and
2. That the aforementioned enveloped contained a copy of the document dated 8/30/05, which is part of the official record of this case.

Date of Mailing: 8/30/05

Date of Certificate



same date,

or

Scott L. Poff, Clerk

By: 

Deputy Clerk

Name and Address

John C. Jones, Sr., Asst. Atty. Gen., 40 Capitol Sq., SW, Atlanta, GA 30334-1300
James Scott Murphy, 626 E. Daniels, Piedmont, MO 63957
Devon Orland, 40 Capitol Sq., SW, Atlanta, GA 30334



Copy placed in Minutes



Copy given to Judge



Copy given to Magistrate